

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Modernizing the E-Rate Program for	)	WC Docket No. 13-184
Schools and Libraries	)	

**UTAH EDUCATION NETWORK COMMENTS TO THE FURTHER NOTICE OF  
PROPOSED RULEMAKING FOR THE E-RATE PROGRAM**

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**I. INTRODUCTION**

The Utah Education Network (“UEN”) respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) July 23, 2014, E-rate Order (“Order”).<sup>1</sup> By state statute, UEN provides reliable broadband Internet connections to public schools, colleges, universities, libraries, charter schools and Head Starts in the state. UEN is a public-private partnership operating a common statewide backbone infrastructure shared by all members of UEN consortium. UEN is a nationally respected model consortium for broadband, distance learning, educational and Internet services. UEN’s network connects approximately 95% of K-12 public schools, major city and county library systems, and many

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<sup>1</sup> Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, *Report and Order of Further Notice of Proposed Rulemaking*, FCC 14-184 (rel. July 23, 2014) (“*Modernizing the E-Rate Program*”).

rural public libraries. UEN's network connections now exceed over 1,400 individual schools and library locations. Almost all (95%) public K-12 schools connecting to UEN have a fiber connection providing a 1 Gbps Wide-Area-Network connection which is scalable for the future.

UEN is able to serve the vast needs of students in both rural and urban areas by providing equitable access to UEN's network and services regardless of where students and patrons live and the costs of providing services to these areas in the state. Utah's land area is 82,170 square miles ranking as the 12<sup>th</sup> largest state with a population density of persons per square mile 33.6 as compared to the national average of 87.4 (*2010 Census*). Approximately 75% of all Utah students live and attend school in major urban population areas (*Utah State Office of Education, Enrollment Data, Oct. 2013*)

Many schools in the farthest remote and rural communities of the state (e.g., Grouse Creek, Park Valley, Snowville) have access to the same broadband resources as students located in highly urbanized areas (e.g., Salt Lake City, Ogden, Provo). Indeed, UEN has been sought out by several states working on forming similar consortia for delivering cost-effective broadband services to school districts, schools and libraries in their states. Over the past several years, UEN has consulted with other E-rate applicants in a number of areas including E-rate program expertise, procurement and contract management, network operations, strategic planning and governance.

## **II. CONSORTIA PARTICIPATION AND DISCOUNT RATE CALCULATIONS**

The Commission seeks desired comments on ways to break down barriers to schools and libraries joining consortia<sup>2</sup>. All 49 of Utah's school districts and K-12 schools, a majority of charter schools, and major library systems and rural libraries are connected to UEN's statewide Wide-Area-Network backbone and Internet services. As such, UEN is able to share operating costs among a large number of eligible E-rate participants, many of which look to UEN's expertise with E-rate and networking technology to help them understand how to best meet the needs of their students, teachers, and library patrons. Without UEN resources and the E-rate program, many schools and libraries simply would not have broadband services.

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<sup>2</sup> Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, *Report and Order of Further Notice of Proposed Rulemaking*, FCC 14-184 (rel. July 23, 2014) ("*Modernizing the E-Rate Program*"). ¶¶ 285-291

UEN's ability to aggregate demand, purchasing, and shared backbone infrastructure has driven down costs of E-rate supported services to make broadband available in rural and urban schools across the state regardless of cost differences in high and low cost areas. Effective network planning, aggregating demand for new and existing consortium members, regional technical support in cooperation with Regional Education Centers, and strong competitive bidding processes has been key to UEN's success.

### UEN Consortium Discount Rate Calculations

The simple average of the computing and filing discount rates for all UEN consortium members has served Utah well in advancing broadband services to schools and libraries across the state. As more schools and libraries have joined the UEN consortium and UEN has conducted competitive procurements, UEN has seen overall decreases in initial and on-going costs of providing broadband and Internet. For example, several charter schools that chose not to connect to UEN initially have contacted us this past year since their current broadband infrastructure is inadequate to support their growing needs. They simply have no path or options forward with their current broadband provider to get more bandwidth for a cost they can afford. UEN is able to aggregate that need along with other schools and libraries to drive cost efficiencies.

We therefore propose to require consortia with only schools or school districts to use a weighted average formula that would account for the number of students in each member school or school district as well as the individual discount levels. Under this proposal, a consortium lead would calculate the consortium discount rates by multiplying each member's individual discount rate by its number of students, adding those figures for each member and then dividing by the total number of students in the consortium. (§ 285)

For consortia composed of schools and libraries or just libraries, we seek comment on how best to calculate a weighted average discount rate, given that libraries do not have student counts. (§ 288)

UEN strongly opposes the above criteria for calculating consortia discounts on the following basis:

1. The weighted average formula will harm UEN consortium participation. The weighted average formula directly increases UEN member's out-of-pocket costs in dramatic fashion. Based on initial calculations, UEN's statewide consortium E-rate discount average would drop by a minimum of 10%. UEN would then be forced to bill the difference in the lost consortium rate to all members. Those consortium members least able to pay would be hit the hardest and may lose service entirely.
2. UEN's ability to serve all students in equitable fashion would be considerably damaged. UEN's ability to share backbone and Points-of-Presence (POP) infrastructure across a large number of constituents results in tremendous cost and operational efficiencies. Weighting large urban school populations and marginalizing smaller school populations (mostly rural in Utah) does not take into account the unique nature of providing a shared infrastructure over a large statewide area with many different challenges of terrain, distance, and local resources to support a statewide network infrastructure.

Indeed, the current consortium calculation formula permits and encourages consortia to inflate their discount rate by taking on high-discount members with few students because each member has the same impact on the consortium discount rate regardless of its student count. For the same reason, the current calculation discourages consortia from taking on smaller members whose discount rate is lower than the consortium's average without the additional district, school, or library. (§ 286)

3. UEN disagrees strongly with the Commissions statement that the current calculation formula permits and encourages consortiums to "take on" high-discount rate members with few students. By state law, UEN is charged with providing broadband services to all K-12 public schools and libraries regardless of their "discount rate" UEN does not arbitrarily seek to serve some schools and districts and not others based on socio-economic status or otherwise. Indeed, high-discount rate members regardless of student populations would not be served without the UEN state consortium. Many rural libraries, schools, and Head Start programs rely on UEN's technical services expertise, engineering, and operations staff to provide reliable broadband services since they lack qualified personnel or staff to do so.

As the simple average calculations for districts is adopted by the FCC, UEN highly recommends that the simple average consortium discount calculations of the consortium members remain in place for large state consortia. Shared circuits and services are best aggregated amongst all of UEN network connections, including the highest cost areas which are the least populated. As for libraries, we would maintain that the current proposed formula of using library square footage (§ 288) to determine a weighted discount average is perilous and would disadvantage many rural and small libraries with small buildings but still have the same need to serve their populations with cost-effective broadband services. UEN would propose keeping the previous E-rate eligibility rules for libraries in tact in determining the discount percentage by the local school district's community eligibility.

### **III. INCENTIVES FOR CONSORTIA**

UEN strongly agrees with the proposal to add 5% to certain consortium discounts (§ 294) where the consortium meets well-defined criteria as suggested by the Education Coalition's (EC) model. "(1) serve at least 30 percent of the students in a state, include at least 30 percent of the local education agencies in the state, or be designated as a consortium by the state, (2) document the participation of individual entities, (3) maintain a level of governance, (4) perform large-scale, centralized procurement that results in master contracts, and (5) open participation to all eligible schools and libraries, including public charter schools, and private schools.

This would not redefine criteria for the formation of consortia but should clearly define the proven successful attributes of state network consortia, setting and promoting a standard for other states or consortia to consider. To guard against fraud, the FCC should not limit or eliminate the separate state designation prong of the EC proposal. UEN agrees that a structured incentive for consortium incentive discounts would be appropriate for consortia that for whatever reason are unable to meet all of the incentive criteria. A lower incentive of 2% - 3% for other consortia for example, would still encourage consortium filing (and bring with it certain financial advantages) by groups of schools and/or libraries agreeable to such filings on their behalf. .

#### IV. STATE CONSORTIA PROCUREMENT and CONTRACT STANDARDS

Bulk purchasing (§ 267) but more importantly, experienced procurement of high speed, highly technical and scalable broadband services that underlie our state network, operated by experts in network engineering, security, and management are inherent in our state network's operation. UEN recommends that states able to embrace the "whole network" approach to educational networking for their schools and libraries would do well to model their efforts on UEN and other successful state networks.

UEN applauds the FCC efforts to simplify the application process, however, UEN questions whether substantive simplification has truly been achieved. For example, multi-year contracts subject to streamlined review are limited to only 5 years. UEN highly suggests that the FCC should direct USAC to defer completely to state procurement and contracting rules. The nature of this potential abuse is evident in one of our state network's 2014 FRNs. This FRN represents services to an extremely remote rural area, surrounded by public lands, and encountered extremely long delays in permitting and construction for the vendor yet, in FCDL comments we see - *"Your FRN has been approved. However, although Block 7b of your Funding Year 2011 FCC Form 470 indicates you were seeking a contract with voluntary extensions, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service."*

USAC is apparently able to intervene in UEN's vendor contractual relationship, though services have only just been installed and effectively extend the term of the contract commensurate with the original term. Note this vendor constructed a wireless link and fiber to a school in a far-reaching rural area requiring National Park Service environmental approval. (This project benefitted the federal agency as well and other communities in this area.) State law requires us to rebid this contract after 5 years of service. UEN should not be required to rebid services after only a few months of services have been provided due to PIA reviewer determinations that overrule state procurement and contracting law. (§ 272-278)

UEN recommends that the FCC should consider multi-year contracts enacted by state network consortia to be valid for the full term of the original contract and any extensions allowed under state contracting rules. Extensions should remain subject to review but should not be denied simply on the basis of an original term length or extensions of contract necessary to realize awarded terms of service.

## **V. CONCLUSION**

For the above reasons, UEN would recommend the FCC recognize the tremendous value and efficiencies that state network consortia such as UEN provide. UEN's ability to meet current and future demands of our constituents depends on the successful public-private partnerships and the critical support of the E-rate program. By allowing UEN to continue to operate with a simple average consortia discount and providing additional incentives for consortia who meet well-defined criteria, UEN and other consortia will continue to be a model of broadband efficiency and operations for the E-rate program nationally.